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It is altogether unlikely, of course, that J. Edgar Hoover, in the closing years of a long, honorable and exceedingly useful career of public service, will be prosecuted for crime. But the awkward truth is that, as Director of the Federal Bureau of Investigation, he has been responsible for conduct by agents of that Bureau which, according to a Justice Department stipulation in Federal District Court the other day, violated the constitutional rights of Robert G. Baker. It is a crime, punishable by ten years in prison and a $5000 fine, for two or more persons to conspire to injure the constitutional rights of a citizen.

Needless to say, Mr. Hoover and his colleagues violated the law in the Baker case in order to enforce the law—just as for many years they have openly violated Section 605 of the Federal Communications Act by tapping telephones in what Mr. Hoover deems to be situations involving the national security. It should be noted that in these instances of law-breaking, Mr. Hoover has had the steady support, if not the express authorization of a succession of Attorneys General and even, perhaps, of Presidents, but not of Congress. This cannot obscure the fact, however, that he was responsible for a breach of the law every time he approved a telephone interception and made use of what was overheard, for whatever reason, and every time he approved an unwarranted invasion of private premises by his agents for the purpose of installing a hidden listening device.

The question that needs to be faced by Congress and by the American public is not what to do about Mr. Hoover, who did no more than his superiors authorized him to do, but what to do about the FBI director who will succeed him and about other law-enforcement agencies which employ the same techniques of investigation. For the sake of the effectiveness in law enforcement which may come from such techniques, do Americans want to make the sacrifice of privacy they inevitably entail?

Of course, law enforcement is not a game to be played by its champions in conformity with a strict code of sportsmanship. It necessarily entails recourse to methods which are not always nice—the use of informers, for example, which means the use of information obtained often by eavesdropping or by a repetition of statements which the speaker supposed he was making in confidence.

Is electronic eavesdropping—bugging or wiretapping—worse than this? We think it is for the simple reason that it is more pervasive, involving indiscriminately the conversations of people having no connection with the crime being investigated. A telephone tap or a concealed microphone monitors all that is said on a specific telephone line or in a particular room. It seems to us that its benefits to law enforcement are outweighed by its cost to freedom of communication.

The distinction is admittedly difficult to draw. But it ought to be drawn by Congress with the importance of privacy as well as the importance of public safety in mind. Congress long ago outlawed wiretapping; it ought to outlaw "bugging" as well, and all the more so since "bugging" so frequently involves a violation of the Fourth Amendment. Some words of Justice Holmes seem to us very apposite: "It is desirable that criminals should be detected, and to that end that all available evidence should be used. It is also desirable that the Government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained . . . We have to choose, and for my part I think it a less evil that some criminals should escape than that the Government should play an ignoble part."